

EXHIBIT B

FILED
TARRANT COUNTY
12/10/2018 11:04 AM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 236-304857-18

WAGNER OIL COMPANY

Plaintiff,

vs.

FEDERAL INSURANCE COMPANY,
PACIFIC INDEMNITY COMPANY,
AND SCOTTSDALE INSURANCE
COMPANY

Defendants.

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

__TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Wagner Oil Company ("Wagner Oil" or "Plaintiff") files this Original Petition against Defendants Federal Insurance Company ("Federal"), Pacific Indemnity Company ("Pacific"), and Scottsdale Insurance Company ("Scottsdale") (collectively, "Defendants") and would respectfully show as follows:

I.

DISCOVERY CONTROL PLAN

1. Wagner Oil requests that this case be governed by a Level 3 Discovery Control Plan as set forth in Texas Rule of Civil Procedure 190.

II.

CLAIM FOR RELIEF

2. Pursuant to Texas Rule of Civil Procedure 47, Wagner Oil seeks monetary relief of more than \$1,000,000, non-monetary relief, and any other relief to which Plaintiff may show itself justly entitled.

III.
PARTIES

3. Plaintiff Wagner Oil Company is a Texas corporation with its headquarters located at 500 Commerce Street, Suite 600, Fort Worth, Texas 76102.

4. Defendant Federal Insurance Company is an Indiana corporation with its principal place of business in New Jersey. Federal may be served through its agent for service, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

5. Defendant Pacific Indemnity Company is a Wisconsin insurance company with its principal place of business in New Jersey. Pacific may be served through its agent for service, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

6. Defendant Scottsdale Insurance Company is an Ohio surplus lines insurance company with its principal place of business in Arizona. Because Scottsdale does not appoint or maintain a registered agent in Texas, it may be served with process through the Commissioner of Insurance, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

IV.
JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this dispute because the damages and relief sought are within the jurisdictional limits of this Court. At this time, Wagner Oil seeks monetary relief of more than \$1,000,000, non-monetary relief, and any other relief to which Wagner Oil may be justly entitled. Wagner Oil's damages, however, will increase as it incurs additional attorneys' fees as a result of Defendants' wrongful conduct.

8. The Court has personal jurisdiction over Defendants because each regularly transacts business in the State of Texas and has had systematic and continuous contacts with the State of Texas. Additionally and alternatively, the Court has personal jurisdiction over

Defendants because the causes of action asserted herein arise from and directly relate to Defendants' transaction of business with Plaintiff within the State of Texas.

9. Venue is proper in Tarrant County because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Tarrant County and, alternatively, because Wagner Oil is headquartered in Tarrant County. TEX. CIV. PRAC. & REM. CODE § 15.002(a).

V.
BACKGROUND FACTS

A. Federal, Pacific and Scottsdale Insured Wagner Oil Under General Liability Policies, Pollution Liability Policies and/or Umbrella Policies.¹

10. Wagner Oil obtained several insurance policies from Federal, including (a) General Liability Policy No. 3580-23-70, which provided Wagner Oil with no less than \$1,000,000.00 in indemnity insurance coverage per occurrence and unlimited defense insurance coverage, for the policy period January 31, 2003 to January 31, 2011; (b) Pollution Liability Policy No. 3725-40-50, which provided Wagner Oil with no less than \$1,000,000.00 in indemnity insurance coverage per pollution incident and unlimited defense insurance coverage, for the policy period January 31, 2003 to January 31, 2009; and (c) Umbrella Liability Policy No. 7981-73-46, which provided Wagner Oil with no less than \$5,000,000 in insurance coverage per occurrence, for the policy period January 31, 2003 to January 31, 2009 (collectively, the "Federal Policies"). Wagner Oil is a named insured under each of the Federal Policies, which provided Wagner Oil coverage for, among other things, "property damage."

11. Wagner Oil also obtained several policies from Pacific, including (a) Pollution Liability Policy No. 3725-40-50, which provided Wagner Oil with no less than \$1,000,000.00 in indemnity insurance coverage per pollution incident and unlimited defense insurance coverage, for the policy period January 31, 2009 to January 31, 2011; and (b) Umbrella Liability Policy

¹ Collectively, the Federal Policies, Pacific Policies, and Scottsdale Policies are referred to herein as "the Policies."

No. 7981-73-46 for the policy period January 31, 2009 through January 31, 2011, which provided Wagner Oil with no less than \$5,000,000 in insurance coverage per occurrence, for the policy period January 31, 2009 to January 31, 2011 (collectively, the “Pacific Policies”). Wagner Oil is a named insured under the each of the Pacific Policies, which provided Wagner Oil coverage for, among other things, “property damage.”

12. Wagner Oil also obtained several insurance policies from Scottsdale, including Commercial General Liability Policy No. CLS0639940 for the policy period January 31, 2000 to January 31, 2001 and Commercial General Liability Policy No. CLS0696966 for the policy period January 31, 2001 to January 31, 2002 (collectively, “the Scottsdale General Liability Policies”), as well as Umbrella Liability Policy No. UMS0005539 for the policy period January 31, 2000 to January 31, 2001 and Umbrella Liability Policy No. UMS0006660 for the policy period January 31, 2001 to January 31, 2002 (collectively, “the Scottsdale Umbrella Policies”).² The Scottsdale General Liability Policies provided Wagner Oil with no less than \$1,000,000.00 in indemnity insurance coverage per occurrence and unlimited defense insurance coverage. The Scottsdale Umbrella Policies provided Wagner Oil with no less than \$10,000,000.00 in insurance coverage per occurrence. Wagner Oil is a named insured under each of the Scottsdale Policies, which provided Wagner Oil coverage for, among other things, “property damage.”

B. Property Damage Pleading Allegations Were Asserted Against Wagner Oil In Several Legacy Lawsuits Filed In Louisiana.

13. Wagner Oil was served with process as a named defendant in the lawsuit styled *Ardoin Limited Partnership, et al. v. Meridian Resource & Exploration, LLC, et al*, Cause No. 10-18692, in the 38th Judicial District for the Parish of Cameron, State of Louisiana (the “Ardoin Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

² Together the Scottsdale General Liability Policies and the Scottsdale Umbrella Policies are referred to herein as the “Scottsdale Policies.”

14. Wagner Oil was named as a defendant in the lawsuit styled *Bowie Lumber Associates v. BP America Production Company, et al.*, Cause No. 123325, in the 17th Judicial District Court for the Parish of Lafourche, State of Louisiana (the “Bowie Lumber Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

15. Wagner Oil was served with process as a named defendant in the lawsuit styled *The State of Louisiana and the Cameron Parish School Board v. BP America Production Company, et al.*, Cause No. 10-18672, in the 38th Judicial District Court for the Parish of Cameron, State of Louisiana (the “Cameron Parish Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

16. Wagner Oil was named as a defendant in the lawsuit styled *Mark Clark v. Wagner Oil Company et al.*, Cause No 10-18866, in the 38th Judicial District Court for the Parish of Cameron, State of Louisiana (the “Clark Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

17. Wagner Oil was named as a defendant in the lawsuit styled *Peltier Farms LLC, et al. v. BP America Production Company et al.*, Cause No. 121221, in the 17th Judicial District Court for the Parish of Lafourche, State of Louisiana (the “Peltier Farms Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.³

18. Wagner Oil was named as a defendant in the lawsuit styled *Debra Bergeron Duhon v. Petro “E” LLC, et al.*, Cause No. 88,120, in the 15th Judicial District Court for the Parish of Vermillion, State of Louisiana (the “Duhon Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

³ The Ardoin Litigation, Bowie Lumber Litigation, Cameron Parish Litigation, Clark Litigation, Peltier Farms Litigation, and Duhon Litigation are collectively referred to herein as the “Louisiana Lawsuits.”

C. Although Wagner Oil Properly Tendered Notice Of Its Claims, Defendants Have Not Provided Full Benefits For The Louisiana Lawsuits.

16. In compliance with the terms and conditions of the Policies, Wagner Oil (through its insurance broker) submitted a request for insurance benefits to Defendants in connection with each of the Louisiana Lawsuits. In violation of their obligations under the Policies, however, Defendants have failed to provide Wagner Oil full benefits for the Louisiana Lawsuits.

17. To date, Wagner Oil has incurred over \$1,000,000 in uncompensated attorneys' fees and costs associated with the Louisiana Lawsuits for which Defendants are responsible pursuant to their respective duties to defend Wagner Oil.

18. Because of Defendants' wrongful conduct in failing to honor their obligations under the Policies, Wagner Oil has been forced to carry the uncompensated costs incurred in defense of the Louisiana Lawsuits.

19. Wagner Oil is entitled to insurance benefits under the Policies. Wagner Oil has complied with all conditions precedent under the Policies, and all conditions precedent to recovery have occurred, been performed, or been excused.

VI.
CAUSES OF ACTION

A. Declaratory Judgment.

20. All prior paragraphs are incorporated herein by reference.

21. Pursuant to the Uniform Declaratory Judgment Act, Chapter 37 of the Texas Civil Practice and Remedies Code, Wagner Oil requests that the Court declare the parties' respective rights and obligations under the Policies. Specifically, Wagner Oil seeks a declaration that Defendants had a contractual duty to pay all defense costs incurred by Wagner Oil in connection with the Louisiana Lawsuits.

22. Wagner Oil's demand for reimbursement of defense costs under the Policies is a real, actual, and justiciable controversy.

B. Breach Of Contract.

23. All prior paragraphs are incorporated herein by reference.

24. Defendants breached their contractual duties owed to Wagner Oil under the Policies.

25. Defendants had a contractual duty to pay all defense costs incurred by Wagner Oil in connection with each of the Louisiana Lawsuits. There is no policy exclusion that negates Defendants' defense coverage obligations. Wagner Oil properly notified Defendants of its claims for coverage, yet Defendants have failed to comply with their obligations to pay all defense costs.

26. Wagner Oil has suffered substantial damages as a proximate cause of Defendants' material breaches of the Policies. These damages include the costs associated with the defense of the Louisiana Lawsuits that remain uncompensated. Wagner Oil is entitled to recover the full amount due under the Policies including all attorneys' fees, costs, and expenses.

E. Attorneys' Fees.

27. All prior paragraphs are incorporated herein by reference.

28. Defendants' wrongful conduct has forced Wagner Oil to retain the undersigned attorneys to prosecute these claims. Wagner Oil has demanded that Defendants perform their respective contractual obligations under the Policies but Defendants have failed to do so. Wagner Oil is therefore entitled to recover its reasonable and necessary attorneys' fees and costs in prosecuting this action under Section 37.009 of the Texas Civil Practices and Remedies Code and Section 38.001 of the Texas Civil Practices and Remedies Code of the Texas Insurance Code.

101. Plaintiff's complaint is based on the following facts:

102. Plaintiff is a resident of the State of California.

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125. Plaintiff is a resident of the State of California.

VII.
DEFENDANTS' POLICY INTERPRETATIONS ARE
INCORRECT AND UNREASONABLE

29. Wagner Oil contends its interpretation of the relevant provisions of the Policies is the only reasonable interpretation. Alternatively, to the extent and under the circumstance that Defendants' interpretations could also be considered reasonable, Wagner Oil alleges that the Policies are ambiguous and that such ambiguity must be resolved in favor of the insured, Wagner Oil.

VIII.
CONDITIONS PRECEDENT

30. All conditions precedent have been performed or have occurred as required.

IX.
PRAYER FOR RELIEF

31. Wagner Oil prays that upon trial of the merits, the Court enter judgment in Wagner Oil's favor on all claims asserted herein, including without limitation:

- (a) declaratory relief providing that Defendants had a contractual obligation to pay all defense costs incurred by Wagner Oil in connection with the Louisiana Lawsuits;
- (b) actual damages as set forth above;
- (c) reasonable and necessary attorneys' fees and costs incurred in connection with Wagner Oil's claims against Defendants;
- (d) costs of Court;
- (e) pre- and post-judgment interest at the maximum rate allowed by law; and
- (f) all other and further relief to which Wagner Oil is justly entitled, whether at law or in equity.

Respectfully submitted,

/s/ Marshall M. Searcy

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ATTORNEYS FOR PLAINTIFF

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CAUSE NUMBER (FOR CLERK USE ONLY): 236-304857-18

COURT (FOR CLERK USE ONLY):

STYLED Wagner Oil Company v. Federal Insurance Company, et al

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: Whitney Beckworth Email: whitney.beckworth@kellyhart.com Address: 201 Main Street, Ste 2500 City/State/Zip: Fort Worth, Texas 76102 Signature: /s/ Whitney D. Beckworth Telephone: (817) 332-2500 Fax: (817) 878-9280 State Bar No: 24087400		Names of parties in case: Plaintiff(s)/Petitioner(s): Wagner Oil Company Defendant(s)/Respondent(s): Federal Insurance Company Pacific Indemnity Company Scottsdale Insurance Company [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other:	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D: <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					

